

MINUTES

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE

August 20, 2014

A meeting of the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee of the County of Kauaʻi, State of Hawaiʻi, was called to order by Mason K. Chock, Sr., Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhuʻe, Kauaʻi, on Wednesday, August 20, 2014, at 9:58 a.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable JoAnn A. Yukimura
Honorable Mason K. Chock, Sr.
Honorable Tim Bynum, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

Excused: Honorable Mel Rapozo

There being no objections, the Committee recessed at 9:58 a.m., to convene in the Committee of the Whole.

The meeting was called back to order at 3:18 p.m., and proceeded as follows:

The Committee proceeded on its agenda item, as follows:

Bill No. 2546	A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (<i>Agronomics / Agricultural Use Definition / Reporting</i>) (This item was Deferred.)
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Chair Chock: Thank you for reading that for me. I have been told that we have to do a little bit more work in the last Committee so I am going to go back into recess as we can receive the last piece.

There being no objections, the Committee recessed at 3:20 p.m., to convene in Economic Development (Sustainability / Agriculture / Food / Energy) & Intergovernmental Relations Committee.

The meeting was called back to order at 3:22 p.m., and proceeded as follows:

Chair Chock: We will reconvene the Finance & Economic Development Committee. Let it be known that we are currently checking on if we can adjourn and continue in the last Committee. In the meantime we have had Bill No. 2546 read and I am going to actually suspend the rules and ask for any testimony at this time on this item. This is the agronomics Bill.

There being no objections, the rules were suspended to take public testimony.

There being no one to give testimony, the meeting was called back to order, and proceeded as follows:

Chair Chock: I call this meeting back to order for discussion. Councilmember Bynum.

Mr. Bynum: I have some questions for Mr. Hunt. Is that okay?

Chair Chock: Sure. Yes. Come on up.

Mr. Bynum: While he is coming, as the author of the Bill...

There being no objections, the rules were suspended.

Mr. Bynum: Thank you for the courtesy. I am not a Committee Member of this Committee either; however, I am the introducer of the Bill and while Steve is getting ready, I want to say that this Bill was deferred for several weeks and so my intention is and there were written questions that went to the County Attorney that we received the answers to just today. So we have not had the time to digest that. I am working on some amendments and I think other Councilmembers are so my hope today is that I ask Steve some fundamental questions, things we have been discussing but I am hopeful that when we are done with any discussions today, that we will defer for two (2) week when I believe amendments will be ready. Having said that, may I proceed?

Chair Chock: Please.

Mr. Bynum: Okay. Thank you, Mr. Hunt for being here. We talked yesterday about some of the questions I might ask you and I am going to ask the staff to put this memorandum up so the public can see it and pass it out. Today we have testimony from the public saying can we quantify what the amount...what are the tax implications of this Bill that is before us? I know from our discussions that we cannot quantify it yet but I have some level of frustration

with that related to this memorandum and I think it is being passed out to Councilmembers. This is a memorandum dated September 30, 2013 so that is about six (6) weeks short of a year ago and it was in preparation for this Bill and other issues as I was researching agriculture dedication. These are tax incentives that we give that are quantifiable and so I wanted to know what land was agriculture dedicated to home and what were the tax implications. This kind of fundamental data and then later it became important for Ordinance No. 960 as well because we have buffer zones so we need that. So, on the tax purpose we want to know what portions of which Tax Map Keys (TMKs) are leased by the seed companies. What kind of tax benefits they have? What is the history of those agriculture dedications? Just to kind of quantify and have data in order to make informed decisions. And so maybe it is not important to put it up there but I knew that this was a big job because of our lack of handling data well as a County in my opinion. To not belabor this but it has been almost a year and then I have this follow-up memorandum to the Mayor asking for the same data urgently for our defense of Ordinance No. 960 which is implemented soon so at this moment am I accurate to presume that we do not have that yet? We do not have graphically which lands are leased by whom and then also the data that shows the tax implications, like market versus agriculture dedicated rate? We do not have that yet, is that correct?

STEVEN A. HUNT, Director of Finance: As you are well aware the dedication program for agriculture use is not specific to I guess the Agronomics Bill at this point, properties that would be subject to Ordinance No. 960. So when the dedications were done there was no Ordinance No. 960 or Bill No. 2491. Data that was collected was very manual. The maps that are submitted are not digitized. They are actually often hand drawn maps, sometimes not to scale that are submitted and those maps depict the uses that the landowner, typically the landowner, intends to do on the property. Leases are not always attached because it is really the responsibility of the lessee if they are applying for the agriculture dedication. But in the case of a landholder, the landholder may apply for their entire parcel and then how they parcels that out to what uses and individuals, as long it is stated on the application, on this really small scale map, plot plan we call it what those uses are. If it says it is for ranching, or specific use such as cattle, when the agriculture inspector goes out there, he knows that is supposed to be cattle on those two hundred (200) acres. It does not say who the cattle rancher is or what the terms of the lease is or the name of the rancher necessarily, just that there is cattle on that acreage. Same with diversified, you could have multiple uses, it could include papayas, bananas, corn, whatever the uses are and again those will be specified in the plot plan but there is no lease information that accompanies that. In other dedications the lessees; themselves, come and apply for the dedication because they want the relief and often the leases that are with the landholder say that the lessees need to pay for the property taxes so it is an incentive for them to come in and get that recorded and get those leases in place. Again that area is not something that is surveyed. It is not on a Geographic Information System (GIS) or any kind of a map that is digital. It is just hand drawn specifying the areas.

Mr. Bynum: So you are familiar with this memorandum?

Mr. Hunt: Yes.

Mr. Bynum: Are these all reasonable data that the Council and the Administration would want to know in order to manage these and to make informed decisions about?

Mr. Hunt: Lease history...starting off with number 2 it is not a requirement for an agriculture dedication therefore if we do not receive a lease, it is potentially private information between the lessee and lessor. For me I cannot provide stuff I do not have.

Mr. Bynum: We do not give an agriculture dedication without an application that includes these documents correct?

Mr. Hunt: We do not require if the landowner is taking the responsibility for potential rollback taxes, all the issues that go along with the dedication how he parcels that out to his individual uses is not of concern to us. Only that those uses that he is applying for are in fact occurring on the property.

Mr. Bynum: You know in these instances there are multiple uses on one (1) parcel so we need to know which portion is used for this purpose and which is used for this purpose.

Mr. Hunt: And again the plot plan that comes in will designate and it will be blocked off, sometimes hand written papayas, bananas and they will put the estimates of the acreage and typically with the larger ones it is usually the full property that is dedicated.

Mr. Bynum: When do you anticipate that real property can quantify for us these simple questions; what is the market rate versus the agriculture dedicated rate? If we remove the agriculture dedication from these properties, what will be the fiscal implications?

Mr. Hunt: And again that would go to all properties. We can give you a list of all dedicated properties by TMK. We could provide who the landowner is but we cannot always provide who the lessee is. So to determine which ones are subject to Ordinance No. 960 because of the nature of their leases, if we do not have that information, we cannot provide that to you.

Mr. Bynum: And that is not the question I am asking you today.

Mr. Hunt: I can provide a list of tax map keys, what their agriculture assessments are, what their market assessments are, and probably a list of the owners.

Mr. Bynum: Like the parcel in German Hill that has roughly two hundred ten (210) acres leased to seed companies and for currently they call "diversified agriculture," right?

Mr. Hunt: Right.

Mr. Bynum: And then there are portions of it leased for ranching. We have to be able to delineate which portions are which in order to properly assess their taxes.

Mr. Hunt: Right and it would say "ranching," "diversified agriculture."

Mr. Bynum: When can the real property provide this level of detail on these documents to your ability to do it.

Mr. Hunt: To the detail...we can look and see what lessees but we may not be able to map or tie lessee to specific areas. We may have the use right, we may have a copy of the lease or I am sorry, the name of the lessee but the two (2) may not necessarily be adjoined.

Mr. Bynum: Well when lessees change we are required to be notified correct?

Mr. Hunt: No, when the use changes not the lessees.

Mr. Bynum: Okay, when the use changes. Not when the lessee changes?

Mr. Hunt: Correct. If you have one (1) rancher and he does not do well, goes belly up, you have another rancher waiting in the wings to come in and come right back and take it and there is not laps in the use then you do not need a copy of the lease. It is still in ranching, it still qualifies to meet their dedication.

Mr. Bynum: So we still have to determine who has which portions of...and you are saying you do not care about that?

Mr. Hunt: I am not saying I do not care, I am just saying I do not have access to that data.

Mr. Bynum: Who does?

Mr. Hunt: Often it is the landowner. Until Ordinance No. 960 becomes something that is compliant and I do not know, I am not going to venture where we are in terms of the legal process but until it is enforceable to have the landowners comply with that, we may not get information on those areas in the leases.

Mr. Bynum: And because you are the head of IT as well can somebody put up the other memorandum that is very similar?

Mr. Hooser: Can I ask a follow-up question?

Mr. Bynum: Please do.

Chair Chock: Councilmember Hooser.

Mr. Hooser: I am trying to follow this.

Mr. Hunt: Sure.

Mr. Hooser: So the agreement to pay property taxes is between the County and the landowner, usually or the lessee? Is that correct?

Mr. Hunt: Well the agreement to pay, there is an obligation to pay between the landowner and the County. That is the taxation process.

Mr. Hooser: Okay.

Mr. Hunt: The agreement, if you will to pay is usually between contract and lease between the landowner and the lessee.

Mr. Hooser: So we are billing the landowners...

Mr. Hunt: And they may be taking that...

Mr. Hooser: But we are not billing the lessees?

Mr. Hunt: Correct.

Mr. Hooser: Okay, thank you. Just to be...

Mr. Bynum: So this is a similar memorandum that I sent for different purposes when it was identified I will tell you where we are at legally.

Ordinance No. 960 is the law in the County of Kaua'i. The Mayor is moving to implement it. It is being defended in court and until we hear else wise it will be implemented this year. You agree with those statements, yes?

Mr. Hunt:

It sounds reasonable to me.

Mr. Bynum:

In this memorandum I am saying, "I am writing an urgent request for GIS maps and data that show the areas affected by Ordinance No. 960. The need for accurate information has been identified by our Special Counsel as being important to the County's defense of the Ordinance. This same information is also essential to the enforcement and management of the law." So basically I am still...in this memorandum, which has similar content it says who is responsible for the tax and for the operations on this land? If we have buffer zones we have to be able to identify that land and understand what the impacts are and one (1) of the things that the seed companies are saying is that the impact is so great it might equate to a taking. Well if we cannot quantify impact then...and so I sent this in May and now when can we anticipate that this kind of data will be available to Council so we can make informed decisions on all a range of issues including taxation?

Mr. Hunt:

I can speak on behalf of Garrett Johnson, the GIS mapper. I know he has done some work in this area with sites that have been identified for him. Identifying all sites that would be subject to this I cannot tell you how much chemicals, how much restricted use pesticides that would be involving all properties that would be subject to Ordinance No. 960 to identify them in order to map them.

Mr. Bynum:

Let me clarify. I am not asking you to identify pesticides, just the land area that is currently being used by which company. Which farmer or rancher or company is using what portion of land that we are giving tax benefits to or in this instance are applied, or impacted by Ordinance No. 960?

Mr. Hunt:

Graphically that would be...first you are dealing with all people who are in agriculture dedication, including people who are in the homestead class that farm a portion of their property. Which would not be subject to Ordinance No. 960 but are part of the dedication. There are dedications that are wide ranging.

Mr. Bynum:

And the point I am making, Steve, is that it is the same set of data right? That we need to understand the implication of the tax benefits we give or do not give and the same data we need to understand graphically where are these areas. So until we have a systemic I have argued for years now, a systemic problem with collecting data in a meaningful way but now these are critical needs and so a citizen says, "Hey, I want to quantify if we remove

agriculture dedication as this Bill proposes, what is the fiscal impact for the companies? When will we be able to determine that?"

Mr. Hunt: Well, what I could provide you is a list of all dedicated properties, their areas that are dedicated, their market values, and the owner's name, I cannot guarantee the lessee's on any of them or tying them to areas and you can get an idea of what the impact is globally for the agriculture dedication. That is about as far as we can provide it as far as detail. You get into mapping leased areas when leases are not provided to the County or are not obligated to be provided to the County, I cannot provide that information.

Mr. Bynum: Okay. Well we need to get there in order to implement the law, correct?

Mr. Hunt: I understand.

Mr. Bynum: Do you have an ETA? If I saw the rest of this memorandum sent by me, it says that I understand that this is going to be a difficult challenge because of our ongoing battle and how difficult it is to access this information. Please schedule a meeting with us and discuss what resources you need to accomplish this goal in a timely manner. I have never received a follow-up to any of these memorandums. Well I am sorry, the first memorandum I received a follow-up from you timely saying this is voluminous and we are busy doing the agriculture dedications and we cannot answer this quickly but it has been almost a year now. In order to make informed decisions, we need this data I just want to know when will we arrive at a point as a County where we actually know who is doing what on the land that we are giving tax incentives to?

Mr. Hunt: I can give you the bulk data and you are welcome to filter. I cannot provide a graphic.

Mr. Bynum: Ever?

Mr. Hunt: If it does not exist. We are talking thousands of man hours and if you want we can hire more staff, and we can look at subbing it out. It is just data that does not exist.

Mr. Bynum: Okay, let us move on to a different question. In the tax spreadsheet that I have been requesting and demanding for several years, I believe there are these data fields and I have not had time to explore them so if you could give me just the...what is the term you?

Mr. Hunt: A swag?

Mr. Bynum: Yes. It is like a reasonable guesstimate of what the fiscal impact is.

Mr. Hunt: Well I think we had this discussion yesterday a little bit. If we are talking potentially about fifteen thousand (15,000) acres of bulk agriculture and I will speak specifically to the Agronomics Bill, if you will.

Mr. Bynum: Right.

Mr. Hunt: We are talking fifteen thousand (15,000) acres of bulk agriculture. The most recent bulk agriculture sale was the two thousand seven hundred (2,700) acres in the Puhi plain up here, Mr. Kelly. A little over fifteen million dollars (\$15,000,000) or right around fifteen million dollars (\$15,000,000). I believe that is five thousand eight hundred dollars (\$5,800) an acre. So if the market value unrestricted is five thousand eight hundred dollars (\$5,800) an acre, the dedicated value as diversified is two thousand dollars (\$2,000) an acre, you are talking about three thousand eight hundred dollars (\$3,800). If you convert three thousand eight hundred dollars (\$3,800) at the current agriculture tax rate, I know we are talking potentially talking agronomics which may have a different tax rate but let us just assume agriculture for now, at the agriculture tax rate of six dollars and seventy-five cents (\$6.75) that equates to twenty-five dollars and sixty-five cents (\$25.65) per acre difference in taxes multiplied by fifteen thousand (15,000) acres, about three hundred seventy-five thousand dollars (\$375,000).

Mr. Bynum: Okay. Because I have not been able to get the aggregate data or a lot of data we focused on just a few parcels for a while and the one like at German Hill, in just round figures the agriculture dedicated taxes are one thousand dollars (\$1,000) or so or less than two thousand dollars (\$2,000) and the market taxes are at thirty-five or thirty-six thousand dollars (\$35,000 or \$36,000). There is about a thirty thousand dollar (\$30,000) difference on that one parcel but then there are some anomaly parcels because what got me started on this was two hundred fifty thousand (250,000) from this urban. So if we used your estimate of three seventy-five (375) there is another number that has not been answered...are there other urban parcels that have had...

Mr. Hunt: I am sure there probably a few urban parcels but they are not going to be the scale of a small second city in Līhu'e so it would be minimal in terms of impact as a global agriculture dedication but there are probably a few urban pieces that have been dedicated.

Mr. Bynum: Right, so right now we are looking at over half a million dollars (\$500,000) between that one (1) parcel...

Mr. Hunt: ...and the rest of the fifteen thousand (15,000), right.

Mr. Bynum: And I said from the beginning I did not think this was a huge amount of funds but it is a significant amount. Right now if we did not change the rate and we need to get this quantified but it is going to have about a half a million dollars (\$500,000) impact on increase revenue for the County. If that is half a million dollars (\$500,000) that means it is coming from the companies who are leasing this land because as you say the landowner...every lease I have ever seen says you pay the property taxes. The economic impact on these companies then is around seven hundred fifty thousand dollars (\$750,000) a year. That is the systematic best guess.

Mr. Hunt: Two hundred thousand dollars (\$200,000) plus the three hundred seventy-five thousand dollars (\$375,000) did not get to the seven hundred fifty thousand dollars (\$750,000) but okay.

Mr. Bynum: I am sorry that is going too up so that is five seventy-five...five or six hundred thousand dollars (\$500,000 or \$600,000). It would be nice to have five or six hundred thousand dollars (\$500,000 or \$600,000) of additional revenue to fill the hole as our testifier said. I just got that guesstimate yesterday. I asked for that estimate almost a year ago. We will have to separately talk about how we get data in a way that is meaningful that we can understand who is doing what on our island and we are giving big tax benefits for. Overall the agriculture dedication there is a round figure. This is trying to focus on Agronomics Bill but overall it is about eight million five hundred thousand dollars (\$8,500,000) is that correct? The difference between market for all of the agriculture dedications, not just the ones we are focusing on here...the difference between market and the dedicated collections.

Mr. Hunt: I would not fair to comment on that without doing a little bit of research on it. I know that there is significant...when you have smaller parcels usually the price break is more significant especially if you are dealing with a five (5) acre piece on a bluff, on an ocean that has been dedicated for pasture or something. There could be significant breaks to that, correct.

Mr. Bynum: And I believe that is in that spreadsheet if we take some time to calculate it, correct?

Mr. Hunt: Right and I think there has also been a spreadsheet created that actually has individual, just the I think that there is roughly nineteen hundred (1,900) dedicated parcels and what their market value and agriculture values are individually but it did not fill the needs of all of the requests so that it has not been provided.

Mr. Bynum: As I said we just go the County Attorney's opinions on things we discussed earlier and there are amendments being prepared and so I do not want to belabor the discussion today but to give a sense that this agriculture dedication overall...and you know what you are getting to is the big land things have much less taxes than smaller agriculture holdings that have density like the one Mike Dyer testified about here, right? And I think that is for a future meeting for us to tease that out because we can get closer to this data in the next couple of weeks by looking at that. Is that correct?

Mr. Hunt: I believe so.

Mr. Bynum: Thank you for answering technical questions and I do not want to belabor things today.

Chair Chock: Is that all?

Mr. Bynum: Yes.

Chair Chock: Good for now? Okay, Councilmember Kagawa.

Mr. Kagawa: I guess I had some questions but if the plan is to defer for two (2) weeks then I guess I can withhold my questions so we can move on and deal with other issues.

Chair Chock: Up to you.

Mr. Kagawa: Is the plan to defer?

Chair Chock: I believe there was a request for deferral from the introducer. Yes.

Mr. Kagawa: Okay. So I will withhold questions.

Chair Chock: Councilmember Yukimura.

Ms. Yukimura: Thank you. Steve, thank you for meeting with me on some of these issues. You had mentioned, I think you had answered a question from Councilmember Hooser that just under the existing system you could possibly find a...I guess an in house...do in house without really an Ordinance.

Mr. Hunt: Correct.

Ms. Yukimura: Look at different level of agriculture value. Is that accurate?

Mr. Hunt: That is. Within the existing framework there is not ordinance, no charter, no requirements to how we value what that agriculture use value is so if we had information and I would suppose that probably the best information would be lease rents. If we could get market lease rents from private landholders showing a differential in rents that are being paid similar areas, similar leases, at a similar time then we could demonstrate that these more intensive uses are willing to pay more than we could make a justification for a higher agriculture value...still not market value, they will fall under the dedication but it could be certainly elevated from the current program which is two thousand dollars (\$2,000) an acre for diversified agriculture has being the assessment.

Ms. Yukimura: So that is something that the Administration is willing to work on?

Mr. Hunt: Yes.

Ms. Yukimura: Okay. And you mentioned that the key information might be lease rents. Is there a way to require those lease rents that that you can get a fair idea about the value?

Mr. Hunt: You know that is probably more of a legal question then a question that I am prepared to answer. I do not know what authority we have to get private lease information. Especially if it is not a requirement for the agriculture dedication itself. As long as the landowners are willing but if it becomes a requirement for the agriculture dedication...

Ms. Yukimura: Then you could?

Mr. Hunt: Yes.

Ms. Yukimura: So that would take an Ordinance in likelihood?

Mr. Hunt: An amendment to the existing.

Ms. Yukimura: To the Ordinance, I mean to the existing law.

Mr. Hunt: Yes, so that all dedications would require, even if the landowner is dedicating on their own volition that anytime there is a lease created that they would have to inform us. That could be by Ordinance. Enforcement might be challenging but yes that could be done by Ordinance.

Ms. Yukimura: Okay and that is something that I would like to request we make request to the County Attorney in terms of understanding the

legal possibilities or limitations. So, staff if you could help me follow up on that. I think the burden of proof is also on the landowner too, right, if there is any dispute.

Mr. Hunt: On whether there is agriculture use occurring?

Ms. Yukimura: On the assessment.

Mr. Hunt: On the assessment, yes, we are consider prima facie correct, so again anything we are discounting from market value, we would certainly want support to say this is the reason why what we have as information to support our values but we are giving again relief from market value.

Ms. Yukimura: Okay, so if the Administration is working on this do they have a timetable for implementing it?

Mr. Hunt: I think, again the biggest portion is going to be the collection of data and the analysis of the data to determine what kind of a factor we might apply to come up with that value and if we do not have the authority to demand lease information it would be very difficult to prove our position.

Ms. Yukimura: Okay, so that is something we could work on in terms of an amendment to the Bill. Okay. Thank you.

Chair Chock: Okay, so follow-up questions. Councilmember Bynum then Councilmember Hooser.

Mr. Bynum: I do not want to get into too much detail today but this has a two (2) year history for me and this whole dialogue is the premise of where I started this whole inquiry so I have to ask some questions about it. The current agriculture dedication law removes that land from value market tax. Based on a study I believe we did about...but the alternative is we are taxing the value of the product produced on that land, correct? We did two (2) studies one for diversified agriculture use is your testimony.

Mr. Hunt: Yes. It is not the product, it is really the caring capacity of the land based on use.

Mr. Bynum: But we looked and said diversified agriculture produces these kinds of products, cut flowers and vegetables. right? And ranching produces this kind of product and the value of that we are taxing instead of this. Now and this is where I started I said I do not believe this law applies because the seed companies are not producing a product for sale so how do we determine the value? If there is no product that we can study how do we

determine the value and right away the County Attorney is saying, yes, and this is almost two (2) years ago. I asked in writing, does this Bill currently apply? And I expected they would say yes and they did although they are kind of backtracking now on the yeses and nos, I will figure it out. But it is the lease value is how we could value it. While the values have be redacted, right?

Mr. Hunt:

Correct.

Mr. Bynum: So to answer that other question and I will turn it into a question, we do not have the authority to know what a private landowner charges for the lease unless they are asking for tax benefits from us in which case then we say sure you want the County of Kaua'i to give you a reduction of your taxes then you need to give us information. Our Ordinance currently says that and the leases I have seen the one is redacted. Now it gets even more complicated because the leases have two (2) payments, right? Answer the first question. How do we determine the value if there is no product produced on the land? That is what I started to begin with and said hey, we need to figure this out.

Mr. Hunt: Yes and I think that is where the lease information would be that trigger because you would be able to look at if a person who is producing papayas has a certain yield of the papayas, there is a certain cost of utilities, and water, and labor, and loss to elements of whatever. There is going to be a risk factor. They essentially back into an analysis for what they would be able to pay for the land in rent. That rent is capitalized to come up with a value. That becomes the agriculture value. That is my understanding of the study that was done I think in 2005 in Hawai'i County, I think was the author. So we adopted those premises which was actually an increase in our rates. We had gone from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) an acre. With an industry like seed corn where there is a product, it is just not being sold or marketed, it is being exported.

Mr. Bynum:

No, I am sorry that is not accurate.

Mr. Hunt:

Okay.

Mr. Bynum: The seeds that leave here go to other researchers. They are not sold to farmers or anyone. So that is the issue. The way the Ordinance is written and the Administrative rules. Eventually, I have been trying to avoid doing a presentation on this because I do not want to belabor it but it is like full of it. Show us your general excise taxes (GET), show us the product because it generates revenue. So if we are going to use lease valuation do we not need to change the law?

Mr. Hunt: Again, we adopted the lease valuations from another county more or less because we did not do our own study.

Mr. Bynum: So we have a new thing happening here. I have seen the contracts. They pay "x" amount per acre, which is redacted. And then there is a provision that says but we are doing this intensive research on some of the land, the small plots that I talked about and we are going to pay a premium for that. So the seed companies are having to delineate for the landowner. What land is being used for parent seed, what is being used more intensively because they are paying a premium and we do not know what that is.

Mr. Hunt: Right. But that would be if we are using ultimately what someone could afford to pay for the lease rent as the basis and we are able to get lease rents from market...I would not use the State only because the State charges pretty much the same rate regardless who the applicant is but if we got individual private landowners to get that information then we would be able to establish maybe a factor saying it is two (2) times, one and a half (1.5) times whatever. We could compare lease rents.

Mr. Bynum: So you are suggesting because of these different practices we need a third category?

Mr. Hunt: I am saying it is possible but I would want to have data to...

Mr. Bynum: That is one thing that could happen.

Mr. Hunt: Correct.

Mr. Bynum: Or we could just say this use is ineligible for tax incentives and you pay the market rate. We could do that and we know we quantified that goes from one thousand dollars (\$1,000) to thirty thousand dollars (\$30,000) for two hundred ten (210) acres here in Līhu'e.

Mr. Hunt: Or to fifty-eight hundred dollars (\$5,800) an acre if you are in the larger scale. Smaller plots will pay more per acre but you are right. That would be difficult.

Mr. Bynum: I am talking about for the big guys.

Mr. Hunt: That would be very difficult to administer on State lands because we do recognize restrictions and if the State leases are saying it is not market, you cannot go take that land and develop it for residential which is probably highest and best use is to make the density out of the home sites, the State leases are very specific on their uses which is for an agriculture uses and they are defining it as an agriculture use.

Mr. Bynum: You are bringing up a whole other issue because it would be interesting to find out what the seed companies pay the private landowners who have these dual rate systems versus what they pay the people of Hawai'i because that State land is leased on our behalf. So if they are paying fifty dollars (\$50) acre here and a whole bunch more over here that would be interesting information for us to know.

Mr. Hunt: It would be interesting but again I would advise legal...getting an interpretation of where private landowner rights and...it is only the tax break.

Mr. Bynum: So the reason I wanted to say...we are in agreement the current activities of the seed companies do not fit the current Ordinance, agreed?

Mr. Hunt: I have no idea. I have not read the opinion yet either.

Mr. Bynum: You do not have to answer that. Let us let the legal people answer that question.

Mr. Hunt: Yes.

Mr. Bynum: You that is where we started. You are saying that administratively maybe we should start a third class. Why did we not do that a long time ago? It is like why...we need to look at this law. Other people, and I say when we look at the tax records that we have on that spreadsheet, probably within a day or two (2) we can quantify market versus agriculture for the entire program, right? It is deciding who pays what portion is difficult, right? And that is what I have been saying here for...ever since I have been on Council. Who pays what portion of the bill is important not just the big picture but who is paying what portion of the bill. We do not know that on these agriculture dedicated lands and you do not know when we will be able to know that even though we are giving tax incentives. Do you see the disconnect?

Mr. Hunt: But you are talking about who is paying individual...the lessees.

Mr. Bynum: Right.

Mr. Hunt: We bill the owner. The owner sub-bills however they do their prorations.

Mr. Bynum: Well we know that the owner is delineating not only how many acres they are using but if they are using it for this or for this

more intensive use that we know leads to more intensive use of pesticides and frequency of spraying and they are paying a premium to the landowners and we are not even collecting the proper taxes. We do not even know what the proper taxes are because this activity does not fit with what we have studied, correct? So in that context I think this Bill is important. I do not want to rush it through. I thought we had six (6) weeks time to get it for next fiscal year but now we do not. We have to get it right. But it is an important Bill. We do not know who we are taxing what or based on what basis. Those are pretty serious concerns for me as a taxpayer and I never thought that this was going to be a huge a windfall of money but I thought we had to do this right, fair, and equitably, and according to the law. So thank you for the time today.

Chair Chock: So we have a few more questions. I am going to go to Councilmember Hooser.

Mr. Hooser: Thank you, Chair. Mr. Hunt, actually I think three hundred seventy-five thousand dollars (\$375,000) or five hundred thousand dollars (\$500,000) is a whole lot of money so I think we should focus in on getting what is fair and equitable for the taxpayers as well as the landowners. The discussion about whether we know it is legal or not to request a copy of the leases, it is my understanding in order to qualify for agriculture dedication one of the requirements are the landowner has to provide copies of Schedule F forms, profit and loss statements, sales receipts, that kind of thing. Is that correct? That is what the law says, right?

Mr. Hunt: And just to clarify it is not specific by parcel so you may have one (1) landowner that owns one hundred (100) parcels, files one (1) Schedule F, one (1) GET and it may have been collected. Again, my understanding from the agriculture inspector is it is evidence to prove that you are farming not evidence upon application.

Mr. Hooser: Okay but I think it is...we need to remember that the landowners are asking the people for special tax breaks on their land and so we are not obligated to give that and so if one (1) landowner has multiple parcels we are entitled, I believe to ask for detail and not just throw our hands up and say there is nothing we can do. I mean the law says right now factors that shall be consider and we had a little bit of this discussion last time in order to get dedication are copies of the preceding years United States (U.S.) Internal Revenue Service (IRS) Schedule F forms showing profit and loss. So I would think that any leases that are engaged by that landowner would be included somewhere in these IRS forms. Copies of the federal sales receipts generated from illicit activities. So again if these landowners want to get tax breaks they need to show us the information showing, right, whether they are entitled to those tax breaks and it is not just a piece of paper with things written on a plot plan. I think it is up to us to require that. It also says valid excise tax license, et cetera. So to me it is very clear that

the law currently says that you shall do that and why do you not just ask the four to six (4 to 6) landowners for this information?

Mr. Hunt: Well let me start with, again, I had explained during the...I think it was 1999 when we had the first revision to the agriculture ordinance. I am going off memory here. The intent when that language was put in was to give teeth to enforcement. The primary means of inspection, again we are talking nineteen hundred (1,900) dedicated parcels with one (1) person covering that including his assessment duties, that is was physical evidence. You drive by and you see neatly kept rows of plants, crops, cattle are there, evidence of droppings are there – they are farming. You drive by and you see no activity for sustained periods of time this was the teeth to ask the taxpayer show me proof that you are farming because I have been by twice and I have seen nothing.

Mr. Hooser: Right and I could just...we had this discussion before.

Mr. Hunt: We did.

Mr. Hooser: And I understand that you believe that the intent was as you state. The law says, "factors that shall be considered," it does not say that if you drive by and you see farms there it is okay you do not have to consider these. It says, "you shall consider" and even if...we are having this discussion about whether or not you have to power to ask for leases so why not...this clearly gives you the power to ask for their tax returns and profit and loss statements from the activities. Why not just ask for that? Why not ask for that to help answer some of the questions that Councilmember Bynum is asking and then go from there? I would say that you are required to ask for that. So even if you are not, even if I defer for a second which I believe you are required to ask for it but even if you just had the discretion to ask for it, why not ask for it to help clear up some of these questions?

Mr. Hunt: I am not the one who administers this so I will pass along those sentiments.

Mr. Hooser: I thought you were the Finance Director.

Mr. Hunt: I am not the agriculture inspector.

Mr. Hooser: No but you are representing the Mayor here today.

Mr. Hunt: Yes I am.

Mr. Hooser: And so in my mind you have the authority to follow through on this. Correct me if I am wrong.

Mr. Hunt: Yes and so noted.

Mr. Hooser: If you want to bring the agriculture inspector in here we can talk to an agriculture inspector. It is again half a dozen at most large landowners would cover the bulk of the properties we are talking about and I would imagine it would be a letter, a well thought out letter that might two (2) hours at the most to compose and some addresses and postage asking them to provide this information and then let them decide not to comply. If you do not want to comply or as the good neighbors I am sure they will comply and then we could address some of these questions. You think we can do that?

Mr. Hunt: I will put it on the list to do right away.

Mr. Hooser: Okay. Thank you very much.

Chair Chock: Any other question for Director of Finance?
Go ahead Councilmember Bynum.

Mr. Bynum: I started asking these questions a long time ago and then a bunch of new dedications were approved. That is a separate issue I am not going to deal with today but it really begs the questions about these things. I want to just point up to this memorandum. It was demonstrated dramatically during deliberations that the County could not deliver accurate or meaningful data about the true extent of the company's operations on Kaua'i much less of an analysis of buffer zones. We were even forced to rely on information provided by the companies about where their operations are occurring. You know Dow promised to give me a map, a GIS map, that we could plug in where their operations were and where they were not on those TMKs and I never received it from them. Are we still pursuing determining what companies operations are? We are doing that right?

Mr. Hunt: You know Office of Economic Development (OED) is in charge of enforcement of Ordinance No. 960 and I will certainly put all resources that IT, with our one (1) GIS mapper will assist in that but I cannot tell you what OED is doing on this.

Mr. Bynum: I mean we said two (2) years ago this is difficult, tell us what resources you need, what kinds of information do you require, this memorandum went out in May, the Council has not received a response and you know saying hey this is going to be really difficult but we think we can get it by this date or if you we need some money to do this. Do you agree that this is important? That we know this information.

Mr. Hunt: Absolutely for Ordinance No. 960 enforcement it is going to be critical.

Mr. Bynum: And for to understand this tax situation. Like I said when I read these things in administrative rules...here is the point I want to make. I have not done this but I can show you a whole bunch of when these dedications were handled properly and they told us exactly and here is Mr. Smith who is growing papayas and it is fourteen (14) acres and here is his GE thing and here are his intentions. We were collecting all of this information pretty dramatically until about...when Grove Farm changed ownership.

Mr. Hunt: But even all of that information collected none of it was mapped and that is what this is asking for.

Mr. Bynum: Right, and so we have all of this information in files all over the place.

Mr. Hunt: On GIS.

Mr. Bynum: The administrative rules seem to require all of these things and that was my reading in the beginning but we cannot say oh well we...anyway...never mind. We will get to this later.

Chair Chock: Councilmember Yukimura.

Ms. Yukimura: So can you not require that as part of the application, there be a GIS mapped parcel.

Mr. Hunt: By the applicant?

Ms. Yukimura: Yes. You could right? You could make it a requirement to make it...

Mr. Hunt: You could but it would probably preclude a lot of the small farmers that are coming in because they would not be able to comply for dedication to get a GIS map. They would have to consult out to have someone do that for them.

Ms. Yukimura: Really?

Mr. Hunt: Yes. Take for instance if you were farming and had a dedication on your personal residence and had acreage and you wanted to farm that. You would have to provide us a GIS map of that dedicated area.

Ms. Yukimura:
workable.

But for most of them a tax map key would be

Mr. Hunt:
hard copy drawing.

Well the tax map key is not a digital. It is a

Ms. Yukimura:
you could ask for a tax map key with a drawing of the...

Right. So perhaps for the smaller farmers

Mr. Hunt:
a tax map key about this size...maybe legal sometimes or letter size.

And that is more or less what we get. We get

Ms. Yukimura:
tracking a lot more could you not require a GIS?

So for the larger corporations where you are

Mr. Hunt:

You could make an Ordinance change to require a GIS for one hundred (100) acres or more or to define boundaries or administrative rule amendments.

Ms. Yukimura:
could do that in your regulations, I think.

You cannot do that in your regulations? You

Mr. Hunt:
of the area dedicated.

Because it is required to submit a plot plan

Ms. Yukimura:

Right.

Mr. Hunt:

You would just have to amend it to...

Ms. Yukimura:
work on that please?

What the plot plan needs. Staff, can we

Chair Chock:
another question?

Any other questions there? No? You have

Mr. Bynum:

Yes, I do.

Chair Chock:

Okay.

Mr. Bynum:
identifies which portion of the TMK? That is one (1) of the required documents now?

So each dedication has a plot plan that

Mr. Hunt: Yes, so when it comes in by TMK there will be a hard copy drawing with sort of sliced up, sometimes engineered but normally hand written.

Mr. Bynum: Also, you know this is not the topic here but Ordinance No. 808 also empowers the County Attorney for agricultural exemptions to require a plot plan saying what is happening where and so I would encourage you to look at Ordinance No. 808 and what data they collected and how that might assist us.

Chair Chock: Thank you. And do you have another question? Okay. I know the request here is to move towards a deferral here and thank you, Steve for answering questions here and I think what we want to do is encourage additional questions. I know that there may be some to the Office of Economic Development in clarifying. In addition I want to ask Councilmembers if we should entertain a briefing. I know we just...from the County Attorney, I know we just got a couple of opinions on this Bill and if we need to ask her questions, if we need to move towards to request an Executive Session or so forth. Some discussion on that please.

Ms. Yukimura: I so glad you raised that, Chair because it was on my mind to ask for that. With these at least two (2) County Attorney's opinions that we received just today I think it would be instructive to have a parallel Executive Session posted so that the next time this comes up on the regular agenda we can have that opportunity to consult with the attorney.

Chair Chock: We will make a request. Thank you.

Ms. Yukimura: Yes, thank you.

Chair Chock: Any further discussing? Thank you again, Steve. If not, I will call this meeting back to order and ask for any other discussion.

The meeting was called back to order, and proceeded as follows:

Chair Chock: I could entertain a motion at this time. Go ahead.

Mr. Kagawa: Before I make the motion to defer, which I will go with, in two (2) weeks, because I see no hurt in discussing further something again. Next time hopefully Councilmember Rapozo will be here but you know in October we will be receiving a summary judgment opinion from Judge Kurren on Bill No. 2491 and I am really hopeful that we would at least wait until Judge Kurren's ruling and see what that ruling looks like before passing further targeted legislation against the seed companies just to respect the Judge's position. It is

more like we wait till we see what you have before we pass further legislation that could possibly encounter some type of litigation and lawsuits. I am hopeful that at the end of the day that we will hold off any final vote on this type of Bill until we receive Judge Kurren's judgment. Thank you.

Chair Chock: Further discussion? Councilmember Yukimura.

Ms. Yukimura: I agree with Councilmember Kagawa that to the extent that there are issues that are involved in the lawsuit like regulation of pesticides or buffer zones we should hold off because we are close. Hopefully to a ruling on the preemption issue which hopefully give us guidance about what the County can or cannot regulate. But with respect to agriculture dedication, I think that is clearly within County's jurisdiction so I do not see any reason to delay the work on that because we have an agriculture dedication law in place and I think every county has one. It has not been challenged or questioned as part of our taxation process so I think we can proceed on those issues but with respect to issues in Ordinance No. 960, I totally agree that we need to wait.

Chair Chock: Thank you. Further discussion?
Councilmember Bynum.

Mr. Bynum: Just to clarify the only reason I brought up Ordinance No. 960 is because I am asking for the same set of data but for different reasons. This is just about who we chose to give tax breaks to. This is simply a question. Given that the nature of this use has changed do we need to look at this law and do we want to continue to give the same tax breaks to that research use that we give to people who produce a product or food for consumption? I do not think there is any connection. I anticipate Judge Kurren's ruling too but there is no preemption issue here, I believe. This is just about County taxes but I agree with the caution but I do not think that this is related.

Chair Chock: Did you have some comments or discussion as well?

Mr. Hooser: Sure, I will be supporting the deferral. I think this is an important discussion that we have and it involves a lot more than just the agronomics use. It involves the management of our agriculture dedication laws in general. This is one (1) important component to that. I do not want to see it delayed. I think it has no relation whatsoever to the pending court decision. We clearly have the authority to manage our property taxes and to follow through with this discussion. So thank you.

Chair Chock: Yes, I think the biggest question is how to because there is an uphill battle on some process here if we are going to move

forward with something like this. So I will entertain, again a motion to defer for two (2) weeks. If I could get a motion.

Upon duly motion made by Councilmember Kagawa, seconded by Councilmember Yukimura, and carried by a vote of 4:0:1 (*Councilmember Rapozo was excused*), Bill No. 2546 was deferred.

The Committee proceeded on its agenda items, as shown in the following Committee Reports which are incorporated herein by reference:

CR-FED 2014-27: on Bill No. 2548 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Time Share Tax Classification Proposal*) (**Approved.**)

CR-FED 2014-28: on Bill No. 2549 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Residential Investor Tax Classification Proposal*) (**Received for the Record.**)

CR-FED 2014-29: on Bill No. 2550 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Vacant Land Re-Classification*) (**Approved.**)

There being no further business, the meeting was adjourned at 6:43 p.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on September 3, 2014:



MASON K. CHOCK, SR.
CHAIR, FED COMMITTEE